

Eastham Conservation Commission

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Adopted July 27, 2021, pursuant to GL Ch. 40, s.8C, following a duly-noticed and advertised public hearing of the Eastham Conservation Commission.

Rules For Hiring Outside Consultants Under GL Ch. 44 § 53G

Section 1 - Preface

As provided by MGL Ch. 44 § 53G, the Eastham Conservation Commission may impose reasonable fees to defray the cost of hiring outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), the Eastham Wetlands Protection Bylaw [Ch. 155, Code of the Town of Eastham], Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law

Funds received by the Conservation Commission pursuant to these rules will be deposited with the Town Treasurer into a special revolving fund for this purpose. Fees paid by applicants are deposited into separate project accounts within the revolving fund. Interest on the fees remains with the individual project account. The accounts remain open until the project is completed. Expenditures from these accounts may be made at the direction of the Conservation Commission without further appropriation as provided in MGL Ch. 44 §53G. Expenditures from these accounts are made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant. The unspent balance, including interest, is refunded to the applicant at the end of the review process.

Section 2 – Determination of Need

At any point prior to a final decision on an application submitted to the Conservation Commission, or any particular matter at issue pursuant to any state or municipal statute, bylaw or regulation under which the Commission serves a regulatory function, any member of the Commission or its Agent may suggest that specific expert services may be necessary for the Commission to come to a final decision which adequately protects the public interests within its regulatory purview.

Any determination of need is to be made during a duly-advertised public meeting of the Commission at which said application or particular matter is under consideration. Said

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suggestion will be considered, discussed and voted upon at that time. A simple majority of the voting Commissioners present will determine the need for outside consulting services.

Should the Commission determine that there is a need for outside consulting services, the Commission will then immediately discuss, in consultation with the applicant as may be warranted, and vote to define the proposed scope of services to be provided by an outside consultant. A simple majority of the voting Commissioners present will define and determine the scope of outside consulting services required.

Following a determination of need and the scope of services to be provided, the Commission will prepare a Request for Fee Proposals to be submitted to no less than three (3) qualifying outside consultants. Should the resulting consultant fee proposals include a fixed fee or a time-and-materials estimated fee of less than ten thousand dollars (\$10,000), then staff will prepare and submit a recommendation to the Commission for consideration no more than fourteen (14) days from the determinations of need and scope of services. Said recommendation will be considered and voted upon at the next regularly-scheduled and duly-advertised meeting of the Commission at which said application or particular matter is under consideration. A simple majority of the voting Commissioners present will select the outside consultant to be retained.

Should the resulting consultant fee proposals include a fixed fee or a time-and-materials estimated fee of more than ten thousand dollars (\$10,000), then the procurement of services shall comply with the provisions of MGL Ch. 30B. Should a formal procurement process be required, further scheduling and coordination will be at the direction of the Eastham Procurement Officer until such time as a consultant is selected.

Section 3 – Selection of Consultant

The consultant shall be chosen by, and report only to, the Commission and/or its Agent. Consultants engaged to provide specific services shall be qualified by possessing (a) an educational degree in or related to the field at issue or (b) three or more years of professional practice in the field at issue or a related field.

The Conservation Commission and/or its Agent shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee.

The applicant may appeal the selection of the outside consultant to the Eastham Select Board, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. Such an appeal must be in writing and received by the Select Board and a copy received by the Conservation Commission within ten (10) business days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be

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extended by the duration of the administrative appeal. The selection by the Commission stands unless the Select Board decides otherwise within one month following the filing of the appeal.

Section 4 – Payment of Fee

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services.

Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the MA Department of Environmental Protection, Southeast Region, Wetlands Program.

Section 5 – Processing and Accounting of Fees Collected, Refund of Unspent Fees

Funds received by the Conservation Commission pursuant to these rules shall be turned over to the Town Treasurer as soon as possible, but at least weekly. The turnover shall be accompanied by a report identifying, by applicant, the amount paid for each project. A copy of the report shall also be forwarded to the Town Accountant.

The Commission and/or its Agent shall use the same process used for payment of other departmental expenses to obtain payment of all bills being charged to the revolving fund. A payment voucher with appropriate supporting documentation shall be submitted to the Town Accountant for placement of the bill on the treasury warrant.

The Commission and/or its Agent shall notify the Town Accountant when each consulting project is completed and all bills have been submitted for payment. The accounting officer must prepare a final report of the account activities for the applicant.

Upon completion of the consulting project, any balance remaining in the project account, including any interest, must be refunded to the applicant. If a refund is due, the Commission and/or its Agent shall submit a voucher to the Town Accountant for placement on the treasury warrant. Upon approval of the warrant, the treasurer will issue the refund to the applicant.